Supreme Court, U.S.
FILED

94 353 MAY 25 1994

OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

RONA V. FINIZIE

Petitioner,

v.

THE CITY OF BRIDGEPORT, CONNECTICUT

Respondent.

ON PETITION FOR CERTIFICATION TO THE SUPREME COURT OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

Rona V. Finizie
2440 North Avenue
Bridgeport, CT 06604
(203) 335-0436
PETITIONER PRO SE

MAY 25, 1994

58

QUESTIONS PRESENTED

1. WHETHER THE TRIAL COURT JUDGE'S IGNORING THE PETITIONER/DEFENDANT'S TWO REQUESTS TO TESTIFY IN DEFENSE OF HERSELF WAS A VIOLATION OF DUE PROCESS AND OF THE RIGHT TO A FAIR TRIAL, AS GUARANTEED UNDER AMENDMENT V AND AMENDMENT XIV OF THE UNITED STATES CONSTITUTION?

2. WHETHER THE TRIAL COURT JUDGE'S ASSESMENT OF THE PETITIONER/DEFENDANT WITHOUT HAVING HEARD HER TESTIMONY OR QUESTIONED HER IN COURT, AND DRAWING CONCLUSIONS SOLELY FROM THE RECORD AS TO HER CHARACTER, INTEGRITY, BEHAVIOR AND HER COMPETENCE IN LAW WAS A VIOLATION OF DUE PROCESS AND THE RIGHT TO A FAIR TRIAL, AS GUARANTEED UNDER AMENDMENT V AND AMENDMENT XIV OF THE UNITED STATES CONSTITUTION?

3. WHETHER THE CONNECTICUT APPELLATE COURT IN NOT RULING ON THE TWO ISSUES AMENDED TO THE PRELIMINARY STATEMENT IN A TIMELY MANNER WAS A VIOLATION OF THE PETITIONER'S RIGHT TO DUE PROCESS AND TO THE RIGHT OF A FAIR TRIAL GUARANTEED UNDER AMENDMENTS V AND XIV OF THE THE UNITED STATES CONSTITUTION?

4. WHETHER THE CONNECTICUT SUPREME COURT IN NOT GRANTING A REVIEW OF THE APPELLATE COURT'S REFUSAL TO RULE ON THE AMENDED ISSUES WAS IN VIOLATION OF AMENDMENTS V AND XIV OF THE UNITED STATES CONSTITUTION?

PARTIES TO THE PROCEEDINGS

RONA V. FINIZIE, PRO SE, PETITIONER

ANN V. FINIZIE, ESTATE OF

LYONEL T. FINIZIE

EDMOND J. FINIZIE

CITY OF BRIDGEPORT, CONNECTICUT:

RESPONDENT

RICHARD S. SCALO, ESQUIRE

COUNSEL FOR CITY OF BRIDGEPORT

RONALD D. JAPHA, ESQUIRE

COUNSEL FOR CITY OF BRIDGEPORT

GORDON AND SCALO

COUNSEL FOR CITY OF BRIDGEPORT

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES v

INDEX OF THE APPENDIX. vi

PETITION

OPINIONS BY OTHER COURTS 1

GROUNDS FOR JURISDICTION 1

CONSTITUTIONAL PROVISIONS. 3

STATEMENT OF THE CASE 5

MANNER OF RAISING QUESTIONS. 15

REASONS FOR GRANTING THE WRIT. . . . 16

CONCLUSIONS 19

TABLE OF AUTHORITIES

Statutes

Connecticut State Statute §12-181

United States Code Title 28 §1257

Constitutional Provisions

AMENDMENT V

AMENDMENT XIV

٧١٧

INDEX TO THE APPENDIX

A. Order of the Connecticut Supreme Court denying Petition for Certification, dated February 24, 1994. . A1

B. Memorandum of Decision of Trial Court Judge Stodolink a) denying Defendant's Motion to reopen judgment for purposes of recognizing 4 special defenses previously entered, and b)granting Plaintiff Motion to reopen judgment and for strict foreclosure, dated March 31, 1993 . . . . . B1

C. Order of Superior Court Judge Vertefeuille terminating Automatic Stay in Appellate Court, dated November 18, 1993. . . . . C1

D. Order of Connecticut Appellate Court granting Motion for review, but denying relief requested, dated December 22, 1993. . . . . D1

E. Order of Connecticut Appellate Court dismissing Motion to amend transcript and to purchase tape recording, dated December 22, 1993. . . . . E1

F. Order of Connectut Appellate Court dismissing Appeal as moot, dated December 22, 1993 . . . . . F1

G. Order of Connecticut Appellate Court granting extension of automatic stay to permit appellant to petition the United States Supreme Court granted April 21, 1994. . . . . G1

H. May 27, 1986 Decision of the Connecticut Appellate Court reversing Judge Stodolink's Order for partition and sale. . . H1

OPINIONS DELIVERED BY OTHER COURTS

There were no Opinions delivered by other Courts, not even the Connecticut Appellate Court.

The only Opinion presented during this ten year period was expressed by the initial Trial Court Judge in his Memorandum of Decision dated March 31, 1993, after both sides moved to Reopen Judgment in late 1992. See Appendix B for text of this opinion.

GROUNDS FOR JURISDICTION

1. The date of the entry of judgment is February 24, 1994, as received from the Connecticut Supreme Court.

2. There were no re-hearings. The order of the Connecticut Supreme Court granting an extension of time to file a Petition for a Writ of Certiorari was dated April 21, 1994.

JURISDICTION, Continued.

3. Petitioner is not filing a Cross-Petition.

4. The Federal Statutory Provision believed to confer jurisdiction on this Court to review the judgment in question by writ of Certiorari is Title 28; §1257 State Courts; certiorari, as quoted below:

"Final judgments of decrees rendered by the highest Court of a State in which a decision could be had may be reviewed by the Supreme Court by a writ of certiorari. . . .where any title, right, privilege of immunity is claimed under the Constitution."

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for federal use, without just compensation.

Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the Uni-

ted States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

This matter involves a large piece of property, suitable for development as the site of a large apartment house in a prime residential area and the City of Bridgeport's attempt to seize the property by unethical means, in violation of the Petitioner's constitutional rights.

The case evolved from a Probate matter after Petitioner's Mother died intestate in 1975. The Probate Court appointed her administratrix of her Mother's estate. When she became ill in 1979 she was replaced, at her brother's request, by a person of no inherent interest in the matter. The new Administrator petitioned for Partition and Sale, and his petition was granted by Trial Court Judge Stodolink. The Petitioner appealed this judgment to the Appellate

Court of Connecticut.

When other heirs neglected to pay taxes, the taxes became deliquent. When the Petitioner applied to take advantage of a tax payment plan offered to all deliquent tax payers by the City, it refused her out of hand.

Shortly after that the City instituted action through its salaried Tax Attorney for foreclosure of the tax liens. This action was eventually dismissed for failure to prosecute dilligently. In early 1986 the Appellate Court overturned Judge Stodolink in the matter of Partition and Sale, and critized him in its decision. See appendix H.

In September 1980, a member of the Tax Attorney's private firm took over the case and filed a motion to disqualify Petitioner's attorney, claiming the appearance of possible conflict of interest,

even though the identical situation existed with other attorneys, and still does today.

Judge Stodolink was sitting again. He granted the motion to disqualify her attorney. The petitioner was forced to go "Pro Se". She fumbled along, losing decisions, but finally managed to secure the services in February 1987 of an attorney recommended as a foreclosure specialist.

On March 25, 1987, the new attorney held a three hour conference in the hallways of the Court. Petitioner was not party to the conference. She was not told any specifics, nor was any agreement about the property mentioned.

Months later, Petitioner discovered in the court file a document, defective on its face, purporting to be Judgment regarding the disposition of the property. It

required sale of the property, and stated that the Petitioner had stipulated to the terms.

This was the first that the Petitioner learned any "agreement" had been made. The Petitioner had not seen and had not signed any agreement.

Shocked and befuddled, and lacking confidence in herself, Petitioner decided to continue to rely on her attorney.

It was not until March 1988 that she realized the full import of what had happened and the precarious position that she was in.

As the time drew near for the fulfillment of the "Agreement", she grew desperate trying to stop the sale of her property. A State Legislator advised her that she could file for Bankruptcy and stop the sale.

The Trustee appointed by the Court

demanded that she hire an attorney to handle the proceedings because he believed that she could not handle the complexities of Bankruptcy by herself.

Thoroughly unnerved by her experiences in Court, and although now distrustful of attorneys, she did retain a lawyer, a bankruptcy specialist.

Her attorney filed many papers of which she had no knowledge. Requested explanations were unsatisfactory and unclear. However, when she discovered that he was trying to sell her property, she dismissed him and immediately hired new counsel to clear up the mess.

Petitioner's new attorney challanged the purported stipulation by affidavit. The City replied by producing a document purporting to be a transcript of the hearing which never occurred.

The City moved for dismissal of

Petitioner's Bankruptcy case in Spring 1992, because the Judge declared the Petitioner was bound by the actions of her previous bankruptcy attorney. The City moved to reopen forclosure of her property.

Judge Stodolink, the initial Trial Court Judge, was sitting again on this case. The Petitioner objected on the grounds that there never had been a stipulation and held that the transcript offered as proof of the stipulation was uncorroborated and the transcript was a fraud.

The Judge ruled against the Petitioner, having ignored her two requests to give testimony, which should have been permitted in order to have a fair trial. In his Memorandum of Decision (see Appendix B) he criticized the Petitioner for lack of corroboration, while refusing to permit her to testify.

He also made assessments as to her character, integrity, behavior and competency in law, based solely on information in the Court file.

At the same time, Judge Stodolink accepted the transcript as valid, even though the transcript was uncorroborated.

Once again the Petitioner filed for Chapter 13 protection in the Federal Bankruptcy Court.

The Plaintiff City continued to press for foreclosure. Even though the Petitioner was in bankruptcy, another Trial Judge, Judge Vetifeuille, permitted these events to happen while important decisions were pending in the Federal Bankruptcy Court which had a higher jurisdiction.

Judge Vertifeuille ruled against the Petitioner, granting the City's Motion for Foreclosure.

The Petitioner, acting Pro Se, appealed this decision to the Connecticut Appellate Court on the basis that a State case should not move ahead while related matters were pending in the Federal Court.

The Federal Court stay was lifted on Motion by the Plaintiff.

Judge Vertifeuille granted the City's Motion for lifting the Appellate Court's automatic stay.* Petitioner filed motion with Appellate Court for Review of the Judge's decision. At the same time, Petitioner filed a motion requesting the Appellate Court to issue an order giving permission to the Petitioner to buy a tape of the trial transcript inasmuch as the transcript prepared by Court personnel did not conform to the Petitioner's clear memory and her contemperaneous notes. The Court personnel had refused her request to hear the tape.

* See Appendix C.

The Motion for Review was granted, but the remedy sought was denied. (See Appendix D)

The motion regarding the purchase of the tape was denied. (See Appendix E)

Petitioner received notice from the Appellate Court that a hearing would be held to determine whether her appeal was moot and her appeal to be dismissed.

Prior to the hearing Petitioner amended her Preliminary Statement of Issues to include two new Questions: the first regarding the denial of her right to testify, and the second regarding the validity of the "transcript" of the "hearing" of March 25, 1987.

A hearing was held by the Appellate Court on January 5, 1994. The appeal was dismissed by the Appellate Court without comment or explanation. Petitioner filed a Petition for Certification to the

* See Appendix F

Supreme Court of Connecticut. The Petition was denied on February 24, 1994. (See Appendix A)

The Connecticut Supreme Court granted a Motion for Extension of Time to file a Petition for Writ of Certiorari to the United States Supreme Court on April 21, 1994. (See Appendix G)

MANNER OF RAISING QUESTIONS

Petitioner raised these questions in her appeal, but since she is Pro Se, she may not have raised them exactly right by failing to cite the Constitution and claiming its protection. Although she knew of her rights, she did not cite them a Federal right.

Her method was to raise them as an amendment to Preliminary Statement of Issues, timely filed.

As to the way in which the questions were treated in the Courts, she does not know anything about the method used by the Court because whe did not receive any Opinions or Memoranda of Decisions. Therefore, she cannot quote the record.

The Appelate Court dismissed her case without comment, and the State Supreme Court refused Certification.

ARGUMENT: REASON FOR GRANTING THE WRIT

This case is a prolonged attempt by the City of Bridgeport, Connecticut to deprive the Petitioner of her property without due process of the law.

Petitioner was deprived of the right to testify in her own defense against a spurious document which was introduced by th Plaintiff purporting to prove that the Petitioner had made an agreement by stipulation with the City of Bridgeport regarding a tax delinquency and permitting the City to seize her property.

The right of due process regarding the deprivation of property is quaranteed by the Fifth and the Fourteenth Amendments to the United States Constitution.

The right of self defense is an inherent right for everyone.

Therefore, the due process rights regarding the deprivation of property

protected by the Fifth and Fourteenth Amendments must include the right to self defense and the right of a defendant to testify in her own defense.

Because the right to due process is protected by the Federal Constitution, the right of a defendant to testify in her own behalf in such a matter is a Federal question, and should be settled by this Court.

If this right to testify is not guaranteed to a defendant, as happened to the present Petitioner, a Judge may go to a cold file and misinterpret "facts" in the file to false conclusion as happened to this Petitioner.

In extreme cases, allowing a Trial Judge to rule only from a file, and not having heard testimony; and that testimony not having been on record, opens the door for abuse from incompetent or corrupt judges.

The Petitioner claims under Rule 10 (c) that the State Court has decided an important question of Federal Law which has not been, but should be settled, by the United States Supreme Court.

CONCLUSION

For the foregoing reasons, the Petitioner Rona V. Finizie, Pro Se, prays the Supreme Court of the United States to grant her petition for a writ of certiorari to review and determine that the Trial Court Judge denied the Petitioner her rights of due process guaranteed to her under the Fifth and Fourteenth Amendments of the Constitution; and that the Connecticut Appellate erred in dismissing her Appeal; and that the Supreme Court of Connecticut erred in denying her Petition for Certification.

Respectfully submitted,

Rona V. Finizie

RONA V. FINIZIE
Petitioner, Pro Se

July 7, 1994

OATH

I declare under penalty of perjury that the foregoing Petition is true and correct.

July 12 , 1994 — Rona V. Finizie

Date

Rona V. Finizie,
Petitioner
2440 North Avenue
Bridgeport, CT 06604
(203) 335-0436

State of Connecticut)
) Fairfield
County of Fairfield)

Personally appeared before me, Rona V. Finizie on this 12th day of July, 1994.

EXP. 3-31-95

JOSEPH MELSENTI
Notary

APPENDIX

APPEN. A SUPREME COURT ORDER DATED 2/24/94.

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-93-0237

Ciry of Bridgeport

v.

Rona V. Finizie et al.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the named defendant for certification to appeal from the Appellate Court [AC 12828], it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/ Alan M. Gannuscio

ASSISTANT CLERK-APPELLATE

Dated: February 24, 1994

(Continued)

APPENDIX A, CONTINUED.

Notice sent: FEBRUARY 24, 1994
Clerk, Superior Court, Fairfield
(CV840217952S)
Clerk, Appellate Court
Rona V. Finizie, pro se
Gordon & Scalo
Miller & Rosnick
Gager, Henty & Narkis
John M Claydon
Bernard Green
Alan B. Fodeman
Ronald D. Japha
Nathanson & Cipriano
Rona V. Finizie, pro se in support of petition;
Ronald D. Japha in opposition.

APPENDIX B MEMO OF DECISION, STODOLINK, J. DATED MARCH 31, 1993

NO. 21 79 52S
NO. 21 79 53S

SUPERIOR COURT

CITY OF BRIDGEPORT

JUDICIAL DISTRICT OF FAIRFIELD

RONA FINIZIE, ET AL.

MARCH 31, 1993

MEMORANDUM OF DECISION CONCERNING MOTIONS TO REOPEN JUDGMENT OF FORCLOSURE BY SALE

Both plaintiff and defendant, Rona Finizie, have filed motions to reopen the judgments of foreclosure by sale entered by the court (Melville, J.) on March 15, 1988 ordering a sale in both files on May 21, 1988 which was stayed by the said defendant's Pro Se application for bankruptcy on May 20, 1988.

The said defendant raises a number of reasons for her to be allowed to file four special defenses to all counts in both complaints.

The defendant claims that she never agreed to the entry of the judgments. This is based on her questioning the 1987 judgments that preceded the judgments to be reopened. The 1987 judgments were reopened at the request of defendant's then attorney. On May 12, 1989, the defendant indicated that there had been no breakdown of communication between her said attorney and her. (Pleading No. 150.) Thus, defendant was aware that new judgments had been entered against her in 1988 and was very knowledgable of their particulars, since she filed her Pro Se bankruptcy petition one day before the ordered sale, thereby delaying these matters for an additional four years.

She now attempts to attack these judgments by claiming that she did not stipulate to the previous judgments, although her only response to the 1987 judgments was to move to have them reopened in 1988 when she sought more time to sell the subject premises privately.

The bald assertion of the defendant at this late date that she did not stipulate to the previous judgments, without further corroboration, is insufficient to persuade the court that her denial of having stipulated in 1987 is credible. The unquestionable facts that her attorney moved to reopen the 1987 judgment in 1988, and her admission that she had no breadown of communications with her attorney, together with her bankruptcy petition one day before the 1988 scheduled sale, reaffirm the content of the court files that the judgments were properly

entered in 1988.

The defendant questions a jury trial assignment for one of these cases for May 17, 1988, but conveniently neglects to explain that defendant's cross complaint in that file was on the jury list as a result of a motion to separate the cross complaint and the foreclosure.

The court is satisfied, from the examination of the court's files in these cases and the lack of corroboration of defendant's claim that she did not stipulate to the 1987 judgments, that the 1988 judgments were not mistakenly, accidentally or fraudulently entered.

The court will, therefore, deny defendant's request to reopen the judgments entered in 1988.

The plaintiff, having been granted a motion to dismiss defendant's bankruptcy petition, has moved to have the

stayed 1988 judgments reopened for the purpose of entering new judgments of forclosure by sale for both premises. Those motions are hereby granted and the plaintiff is directed to claim these matters for hearing on the foreclosure calendar so that the debt may be found, the fair market value of the premises may be determined and the sale date, together with the other usual orders for a sale, may be set in these files by the judge hearing that calendar.

APPENDIX C ORDER OF THE SUPERIOR COURT
DATED NOVEMBER 18, 1993

NO. 21 79 52S	:	SUPERIOR COURT
NO. 21 79 53S	:	STATE/CONNECTICUT
CITY OF BRIDGEPORT	:	JUDICIAL DISTRICT
v.	:	OF FAIRFIELD
RONA FINIZIE ET AL	:	NOVEMBER 18, 1993

O R D E R

The foregoing Motion, having been heard, the Court finds that the Appeal is taken only for delay (and) the due administration of justice so requires, the stay of proceedings as applies based upon the Appeal by the defendant, RONA FINIZIE, is terminated.

(hand-written insert in Judge's hand)
"Ruling made on the record--transcript will follow."

By /s/ Vertefeuille J.
Judge, Superior Court
"11/18/93"

(Continued)

APPENDIX CONTINUED

CERTIFICATION

This will certify that a copy of the foregoing has been mailed on the above date to:

RONA V. FINIZIE pro se
2440 North Avenue
Bridgeport, CT 06604
(203) 335-0436

Green & Gross, P.C.
1087 Broad Street
Bridgeport, CT 06604
(203) 335-5141

Harold L Rosnick, Esq., Committee
Miller & Rosnick, P.C.
815 Main Street Ste. 202
Bridgeport, CT 06604

Alan B. Fodeman, Esq.
783 King's Highway
Fairfield, CT 06430
(203) 367-6345

Gager, Henry & Narkis
30 Main Street
Danbury, CT 06810
(203)743-6363

John M. Claydon Esq.
1216 Post Road
Fairfield, CT 06430
(203) 254-1550

Richard Scalo Miller & Rosnick
Ronald D. Japha Claydon & Lawlor
Rona V. Finizie, pro se
Alan B. Fodeman Clerk, Fairfield
Bernard Green J.D. 217952
Nathanson & Cipriano 217953
Gager & Henry
Notice: 11/24/93

/s/ RDJ
Ronald D. Japha

APPENDIX D ORDER OF THE APPELLATE COURT DATED DECEMBER 22, 1993

NO. A.C. 12828

CITY OF BRIDGEPORT : APPELLATE COURT

v. : STATE OF CONNECTICUT

RONA V FINIZIE ETAL : DECEMBER 22,1993

O R D E R

THE NAMED DEFENDANT/APPELLANT'S MOTION FOR REVIEW, FILED NOVEMBER 23, 1993,

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D THAT THE MOTION IS GRANTED, BUT THE RELIEF REQUESTED THEREIN IS DENIED.*

*SPEAR, J., IS RECUSED.

BY THE COURT,

/s/Alan M. Gannuscio

ASSISTANT CLERK - APPELLATE

(Continued)

APPENDIX CONTINUED

NOTICE SENT: DECEMBER 22, 1993
RICHARD SCALO
RONALD D. JAPHA
RONA V. FINIZIE, PRO SE
ALAN B. FODEMAN
BERNARD GREEN
NATHANSON & CIPRIANO
GAGER & HENRY
MILLER & ROSNICK
CLAYDON & LAWLOR
HON. CHRISTINE VERTEFEUILLE
CLERK, SUPERIOR COURT, FAIRFIELD
CV 84 0217953S

ct

#476/2504

APPENDIX E ORDER OF APPELLATE COURT
DATED DECEMBER 22, 1993

NO. A.C. 12828

CITY OF BRIDGEPORT : APPELLATE COURT

V. : STATE OF CONNECTICUT

RONA V FINIZIE ET AL: DECEMBER 22, 1993

O R D E R

THE MOTION OF THE NAMED DEFENDANT-APPELLANT FOR LEAVE TO AMEND THE TRANSCRIPT AND FOR AN ORDER PERMITTING THE DEFENDANT TO PURCHASE A COPY OF THE TAPE RECORDING, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D THAT THE MOTION IS DISMISSED.*

*SPEAR, J. IS RECUSED.

BY THE COURT,

/s/ ALAN M. GANNUSCIO

ASSISTANT CLERK-APPELLATE

(Continued)

APPENDIX E CONTINUED

NOTICE SENT: DECEMBER 22, 1993
GAGER & HENRY
NATHANSON & CIPRIANO
MILLER & ROSNICK
CLAYDON & LAWLER
BERNARD GREEN
ALAN B. FODEMAN
RONALD D. JAPHA
RICHARD SCALO
RONA V. FINIZIE, PRO SE
SHIRLEY SAMBROOK, OFFICIAL REPORTER

ct

#538/2504

APPENDIX F ORDER OF APPELLATE COURT, DATED JANUARY 5, 1994

APPELLATE COURT

STATE OF CONNECTICUT

A.C. 12828

City of Bridgeport

v.

Rona V. Finizie et al.

January 5, 1994

O R D E R

After consideration of the question whether the appeal should be dismissed as moot, the Appellate Court, suo motu, finds that the appeal should be, and hereby is, dismissed.

Lavery and Spear, Js. recused.

By the Court,

/s/ Alan M. Gannuscio
Alan M. Gannuscio
Assistant Clerk-Appellate

(Continued)

APPENDIX F CONTINUED

Notice Sent: 1/5/94
Notice To:
Rona V. Finizie, pro se
Richard Scalo
Ronald D. Japha
Alan B. Fodeman
Bernard Green
Gager & Henry
Nathanson & Cipriano
Miller & Rosnick
Claydon & Lawlor
Clerk, Superior Court, Fairfield
Hon. Christine Vertefeuille
PAC

CV 84 0217953
CV 84 0217952

bm

No Record
No Transcripts
No Exhibits

APPENDIX G ORDER OF APPELLATE COURT, DATED APRIL 21, 1994

NO. A.C. 12828

CITY OF BRIDGEPORT : APPELLATE COURT

V. : STATE OF CONNECTICUT

RONA V FINIZIE ET AL: April 24, 1994

O R D E R

THE MOTION OF THE DEFENDANT/APPELLANT, FILED MARCH 18, 1994 FOR EXTENSION OF AUTOMATIC STAY HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D GRANTED UNTIL EXPIRATION OF THE TIME TO PETITION TO THE UNITED STATES SUPREME COURT OR, IF A PETITION IS FILED, UNTIL THAT COURT HAS TAKEN ACTION IN THIS CASE, EITHER BY A DENIAL OF THE PETITION FOR CERTIORARI OR, IF APPLICABLE, BY A DECISION ON THE MERITS OF THE APPEAL.

APPENDIX G CONTINUED:

BY THE COURT,

/S/ ALAN M. GANNUSCIO

Alan M. Gannuscio
ASSISTANT CLERK - APPELLATE

NOTICE SENT: 4/21/94
RICHARD SCALO
RONALD D. JAPHA
RONA V. FINIZIE, PRO SE
ALAN B. FODEMAN
BERNARD GREEN
NATHAN & CIPRIANO
GAGER & HENRY
MILLER & ROSNICK
CLAYDON § LAWLOR
CLERK, FAIRFIELD, J.D.
(CV840217952S)
HON. CHRISTINE VERTEFEUILLE

dcm

APPEN. H: MAY 27, 1986 APPELLATE DECISION

APPELLATE COURT

STATE OF CONNECTICUT

7 CONN. APP. 522

MAY 27, 1986

JOHN M. CLAYDON, JR., ADMINISTRATOR (ESTATE OF ANN V. FINIZIE) v. RONA V. FINIZIE ET AL.

DUPONT, C.J., HULL and BORDEN, Js.

The plaintiff administrator of the estate of A filed an action in the Superior Court seeking a partition and sale of certain real property owned by A and her three defendant children as tenants in common. From the trial court's judgment ordering the partition of the property by sale, the named defendant appealed to this court. HELD that since the statutes (§§ 52-495 and 52-500), pursuant to which the plaintiff brought the

action here, authorize such actions by "any person interested" in the subject property, and since a fiduciary, who, like the plaintiff, does not claim that the proceeds from the sale are needed to satisfy the debts of the estate, is not a person with an interest in the property, the plaintiff lacked standing to bring the action.

Argued April 10--decision released May 27, 1986.

Claydon v. Finizie

Action for the partition and sale of certain real estate located in the City of Bridgeport, brought to the Superior Court in the judicial district of Fairfield and tried to the court, STODOLINK, J.; judgment ordering a partition by sale, from which the named defendant appealed to this court. ERROR; JUDGMENT DIRECTED.

LAWRENCE V. PARNOFF, for the appellant (named defendant).

AMY E. TODISCO, for the appellee (plaintiff).

HULL, J. The named defendant, Rona Finizie, her two brothers, the defendants Lionel T. and Edmond J. Finizie, and their decedent mother, whose estate is being admistered by the plaintiff,[1]

[1] are each owners of record as tenants in common of an undivided one-quarter interest in two pieces of real estate in Bridgeport. The plaintiff, representing the estate of the defendants' mother, Ann, brought suit seeking a partition and sale of the real estate. The Defendant Rona Finizie claimed in two overlapping special defenses and in a counterclaim that she had filed a claim against Ann's estate for $60,000 for care and support she provided to Ann. She argued that since that amount exceeded the entire value of the estate, her claim had to be resolved before a decision could be made on the partition

1 The complaint was brought only in the name of the estate of Ann Finizie. It did not name the fiduciary or allege proper appointment of one. The pleadings and the judgment, however, reflect the fact that the fiduciary is John M. Claydon, Jr.

action. She also alleged essentially in two other special defenses that her two brothers held only naked record title to a one-quarter interest, each having made no payments in connection with the purchase and operations of the property. She asserted that, as a result, the property was equitably owned one-half by her and one-half by Ann's Estate.

The court, on May 2, 1985, rendered judgment ordering partition by sale. The trial court, in that judgment, declared the ownership interests to be as alleged in the plaintiff's complaint and stated flatly that "a sale will better promote the interest of the parties".[2]

2 The court did not file a memorandum of decision elaborating on this barebones statement in the judgment, nor was articulation sought by the defendants.

Only Rona appeals, raising the following two issues: (1) whether the trial court acted prematurely in hearing the matter and rendering judgment in light of her pending claim against the estate: and (2) whether the court erred in undly restricting the admission of evidence she offered to support her claim of a one-half equitable interest in the property. Because we decide, sua sponte, that the complaint should have been dismissed for lack of subject matter jurisdiction, we do not consider these claims of error.[3]

---

3 The issue we consider was not raised below nor briefed nor argued by the parties in this court. We therefore decide only such issues as are necessarily involved in the conclusion which we have reached.

Although the complaint does not so state, it is apparent that the plaintiff sought a partition of the realestate under General Statutes §152-495[4] and a sale under General Statutes §52-500.[5] Both statutes confer jurisdiction on the Superior Court " upon the complaint of any person interested." It has long been well settled law that an administrator does not have title to real property but that title passes to the heirs subject to the right of administration. BRILL v. ULREY, 159 Conn. 371,375,269,A.2d262(1970);

4 General Statutes §52-495 provides in pertinent part: "Courts having jurisdiction of actions for equitable relief may, upon the complaint of any person interested, order partition of any real property held in tenancy in common..."

5 General Statutes §52-500 provides in pertinent part:"(a) Any court of equitable jurisdiction may, upon the complaint of any person interested, order the sale of any property, real or personal, owned by two or more persons, when, in the opinion of the court, a sale will better promote the interests of the owners."

O'CONNOR v. CHIASCIONE, 130Conn. 304, 306-308,33A.2d 336 (1943); BOWEN v. MORGILLO, 127 Conn. 161,168,14A.2d 724 (1940). The rule applies whether the fiduciary is an executor or administrator. PIGEON v. HATHEWAY 156 Conn. 175,177, 239 A2.d 523 (1968)

The precise question of whether an administrator, alleging nothing more than tenancy in common, is a "person interested" under either of these two statutes is a case of first impression. The case of BRILL v. ULREY, supra, is, however, clear authority for the proposition that such a claim must fail for lack of subject matter jurisdiction. The issue in BRILL was whether an executor could institute and maintain an action to quiet title to real estate

where there was no allegation that the property involved was needed to satisfy claims against the estate. General Statutes §47-31 provides that an action to quiet title may only be brought by a "person claiming title to, or any interest in, real or personal property." The defendants asserted that the plaintiff had no such interest. In responding to that claim, the Supreme Court stated: "We have permitted the representative of the estate of a deceased person to maintain an action to quiet title under three separate circumstances. In MUNGER v. DOOLAN, 75 Conn. 656,662,55A.169 (1903), we held that an administrator has sufficient interest in the realty to bring an action to quiet title if the property is

needed to satisfy a claim against the estate. In MINERV. MINER, 137 Conn.642, 646-47, 80 A.2s 512 (1951), the decedent himself had instituted an action to quiet title prior to his death, and we permitted his administrator c.t.a. to prosecute the case to judgment under authority of what is now General Statutes §52-599. And most recently, in PIGEON V. HATHEWAY, 156 Conn. 175, 176-77,239 A.2d 523(1968), we allowed an executor to institute a suit under the theory that the cause of action was actually one to quiet title of personalty under the doctrine of equitable conversion, since the validity of an option to purchase real estate was being tested.

"Where, however, an executor seeks to institute and maintain an action to quiet title to real property without alleging and proving that the property is needed to

settle claims against the estate, we do not think that the statutory requirement of interest in the property is sufficiently met....

"The (O'CONNOR v. CHIASCIONE, supra, 306-308,) decision makes it clear that the power of 'possession, care and control' granted to an executor under General Statutes §45-252 over real estate during the settlement of an estate is given only to protect the rights of creditors. See also HARDY v. SCOTT, 127 Conn. 722,723, 19 A.2d 420 (1941). The executor's power is in derogation of rights of their heirs, and since it is so limited in purpose, it is properly exercised only when the exigencies of the estate so require. Where, as in the instant case, no

allegation is made that the property is needed to meet claims against the estate, there can be no occasion to permit the exercise of the executor's power. The court below committed error, therefore, when it rendered a judgment partially in favor of the executors, who did not have a cause of action. "BRILL V. ULREY, supra, 374076.

Absent a showing in this case by the plaintiff that he brought himself as administrator within some recognized or recognizable principle giving him a sufficient interest in the real estate to request its partition, he lacked standing to bring this action. "Standing is a matter of subject jurisdiction which cannot be conferred by the parties. "HOUSING AUTHORITY V. LOCAL 1161, 1 Conn. App. 154,157, 468 A.2d 1251, cert. denied,

192 Conn. 802,471 A.2d 244 (1984). The Superior Court, therefore, lacked jurisdiction over the plaintiffs complaint.

We note, for clarity, that the plaintiff could have, but did not, bring a complaint for partition or sale by direct petition to the Probate Court under the provisions of General Statutes § 45-257a. Under that statute, both partition and sale are authorized in language substantially similar to that of General Statutes §§52-495 and 52-500. We need not decide whether there is a requirement procedure.[6]

6 We do not reach the question of whether this statute should be construed as vesting exclusive control of such proceedings in the Probate Court or as merely creating jurisdiction concurrent with that of the Superior Court. The preeminent authority on Connecticut probate practice, however, concludes as follows: " The partition, or sale in lieu of partition, of real estate owned in part by a deceased person may

may furnish another example of concurrent jurisdiction. At one time, it was considered that the Superior Courtcould order the sale of the realestate of a deceased person before the final settlement of his estate where a partition between the joint devisees was not feasible. This, however, was because the statute at that time did not empower the Probate Court to order the sale of realestste to facilitate distribution. Under the present statutes, which empower the Probate Court to authorize a sale whenever it shall find that to grant such authority would be for the best interests of the parties in interest and which prohibit a Superior Court partition of any property belonging wholly to an estate in settlement in the Probate Court before it is ready for distribution, a case could hardly arise where the Probate and Superior Courts would have concurrent jurisdiction with reference to the sale or partition of property wholly owned by an estate. However, in the case of property partially owned by an estate, it would seem that both the Probate Court, within specified limits, and the Superior Court could order partition or sale in lieu of partition." (Footnotes omitted.) 1 Locke & Kohn, Connecticut Probate Practice 75. For a discussion of exclusive and concurrent jurisdiction in the Probate Court and the Superior Court. See HALL v. DICHELLO DISTRIBUTORS, INC., 6 Conn.App. 530,534-36, A.2d (1986).

There is error, the judgment is set aside and the case is remanded with direction to dismiss the complaint for lack of subject matter jurisdiction.

In this opinion the other judges concurred.